

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**SYNERGY PHARMACEUTICALS INC., *et al.*,
Debtors.¹**

Chapter 11

Case No. 18-14010 (JLG)

Jointly Administered

**DECLARATION OF JAMES DALOIA OF PRIME CLERK LLC
REGARDING THE SOLICITATION OF VOTES AND TABULATION OF
BALLOTS CAST ON THE THIRD AMENDED JOINT PLAN OF REORGANIZATION
OF SYNERGY PHARMACEUTICALS INC. AND ITS DEBTOR AFFILIATE**

I, James Daloia, declare, under the penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the Director of Solicitation and Public Securities at Prime Clerk LLC (“Prime Clerk”), located at 830 Third Avenue, 9th Floor, New York, New York 10022. I am over the age of eighteen years and not a party to the above-captioned action. Unless otherwise noted, I have personal knowledge of the facts set forth herein.

2. I submit this Declaration with respect to the solicitation of votes and the tabulation of ballots cast on the *Third Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate*, dated March 13, 2019 [Docket No. 545] (as may be amended, supplemented, or modified from time to time, the “Plan”).² Except as otherwise noted, all facts set forth herein are based on my personal knowledge, knowledge that I acquired

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Synergy Pharmaceuticals Inc. (5269); Synergy Advanced Pharmaceuticals, Inc. (4596). The address of the Debtors’ corporate headquarters is 620 Lee Road, Chesterbrook, Pennsylvania 19087.

² All capitalized terms used by not otherwise defined herein have the meanings ascribed to them in the Plan or Disclosure Statement Order (as defined below).

from individuals under my supervision, and my review of relevant documents. I am authorized to submit this Declaration on behalf of Prime Clerk. If I were called to testify, I could and would testify competently as to the facts set forth herein.

3. This Court authorized Prime Clerk's retention as the (a) claims and noticing agent to the above-captioned debtors and debtors in possession (collectively, the "Debtors") pursuant to the *Order Appointing Prime Clerk LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date*, dated December 14, 2018 [Docket No. 58] and (b) administrative advisor pursuant to the *Order Authorizing Employment and Retention of Prime Clerk LLC as Administrative Advisor to the Debtors Nunc Pro Tunc to the Petition Date*, dated January 24, 2019 [Docket No. 264] (collectively, the "Retention Orders"). The Retention Orders authorize Prime Clerk to assist the Debtors with, among other things, the service of solicitation materials and tabulation of votes cast to accept or reject the Plan. Prime Clerk and its employees have considerable experience in soliciting and tabulating votes to accept or reject chapter 11 plans.

Service and Transmittal of Solicitation Packages and the Tabulation Process

4. Pursuant to the *Order (I) Approving The Form And Manner Of Notice Of The Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Scheduling Hearing On Confirmation Of Plan; (IV) Establishing Deadlines And Procedures For Filing Objections To Confirmation Of Plan; (V) Establishing Deadlines And Procedures For Voting On The Plan; (VI) Approving Solicitation Procedures; (VII) Establishing Procedures For Tabulation Of Votes; And (VIII) Granting Related Relief*, dated March 13, 2019 [Docket No. 541] (the "Disclosure Statement Order"), the Court established procedures to solicit votes from and tabulate ballots submitted by holders entitled to vote on the Plan (the "Solicitation Procedures"). Prime Clerk adhered to the Solicitation Procedures outlined in the Disclosure Statement Order and the

Ballots, which were distributed to parties entitled to vote on the Plan. I supervised the solicitation and tabulation performed by Prime Clerk's employees.

5. The Debtors established March 5, 2019, as the record date (the "Voting Record Date") for determining which creditors were entitled to vote on the Plan. Pursuant to the Plan and the Solicitation Procedures, only holders as of the Voting Record Date in the following classes were entitled to vote to accept or reject the Plan (the "Voting Classes"):

Plan Class	Class Description
3	Term Loan Claims
4	General Unsecured Claims

No other classes under the Plan were entitled to vote on the Plan.

6. In accordance with the Solicitation Procedures, Prime Clerk worked closely with the Debtors and their advisors to identify the holders entitled to vote in the Voting Classes as of the Voting Record Date, and to coordinate the distribution of solicitation materials to these holders. A detailed description of Prime Clerk's distribution of solicitation materials is set forth in Prime Clerk's *Affidavit of Service of Solicitation Materials*, which was filed with this Court on March 20, 2019 [Docket No. 572].

7. Further, in accordance with the Solicitation Procedures, Prime Clerk reviewed, determined the validity of, and tabulated the ballots submitted to vote on the Plan. Each ballot submitted to Prime Clerk was date-stamped, scanned, assigned a ballot number, entered into Prime Clerk's voting database, and processed in accordance with the Solicitation Procedures. To be included in the tabulation results as valid, a ballot must have been (a) properly completed pursuant to the Solicitation Procedures, (b) executed by the relevant holder entitled to vote on the Plan (or such holder's authorized representative), (c) returned to Prime Clerk via an approved

method of delivery set forth in the Solicitation Procedures and (d) received by Prime Clerk by 4:00 p.m. (prevailing Eastern Time) on April 11, 2019 (the "Voting Deadline").

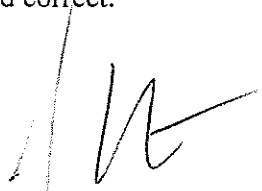
8. All valid ballots cast by holders entitled to vote in the Voting Classes and received by Prime Clerk on or before the Voting Deadline were tabulated pursuant to the Solicitation Procedures.

9. The final tabulation of votes cast by timely and properly completed ballots received by Prime Clerk is attached hereto as Exhibit A.

10. A report of all ballots excluded from the final tabulation prepared by Prime Clerk, and the reasons for exclusion of such ballots, is attached hereto as Exhibit B.

To the best of my knowledge, information and belief, I declare under penalty of perjury that the foregoing information concerning the distribution, submission and final tabulation of ballots in connection with the Plan is true and correct.

Dated: April 15, 2019



James Daloia
Director of Solicitation and Public Securities
Prime Clerk LLC

Exhibit A

Synergy Pharmaceuticals Inc., et al.
Exhibit A - Tabulation Summary

Class	Class Description	Number Accepting	Number Rejecting	Amount Accepting	Amount Rejecting	Class Voting Result
		%	%	%	%	
3	Term Loan Claims	5	0	\$37,105,161.21	\$0.00	Accept
		100%	0%	100%	0%	
4A	General Unsecured Claims against Synergy Advanced Pharmaceuticals, Inc.	15	0	\$18,218,007.00	\$0.00	Accept
		100%	0%	100%	0%	
4B	General Unsecured Claims against Synergy Pharmaceuticals Inc.	54	0	\$19,807,130.70	\$0.00	Accept
		100%	0%	100%	0%	

Exhibit B

Synergy Pharmaceuticals Inc., et al.
Exhibit B - Report of Non-Security Ballots Excluded from Tabulation

Plan Class	Plan Class Description	Creditor Name	Voting Amount	Accept/Reject	Reason(s) for Exclusion
4A	General Unsecured Claims against Synergy Advanced Pharmaceuticals, Inc.	Daly, Richard J.	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4A	General Unsecured Claims against Synergy Advanced Pharmaceuticals, Inc.	Jacob, Gary S.	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	AIG Property Casualty, Inc. and its affiliates identified on the Addendum hereto	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Aldape, Cynthia	\$23,468.90	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Aldape, Joel	\$2,375.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Bertolino, Rachael	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Crainshaw, Elaine F	\$52,258.36	Accept	BALLOT RECEIVED AFTER VOTING DEADLINE
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Daly, Richard J.	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Jacob, Gary S.	\$1.00	N/A	HOLDER DID NOT INDICATE VOTE TO ACCEPT OR REJECT THE PLAN
4B	General Unsecured Claims against Synergy Pharmaceuticas Inc.	Premium Color Group, LLC	\$90,134.99	Accept	BALLOT RECEIVED AFTER VOTING DEADLINE